

## HOUSE BILL NO. 683

INTRODUCED BY BRUEGGEMAN

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR A CHANGE IN A WATER  
5 APPROPRIATION RIGHT; AUTHORIZING A CHANGE IN A WATER APPROPRIATION RIGHT WITHOUT  
6 PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A  
7 REPLACEMENT WELL FOR A MUNICIPAL WELL WHEN THE APPROPRIATION DOES NOT EXCEED 450  
8 GALLONS A MINUTE; AUTHORIZING THE CONSTRUCTION OF CERTAIN REDUNDANT WELLS WITHOUT  
9 THE PRIOR APPROVAL OF THE DEPARTMENT, SUBJECT TO CERTAIN REQUIREMENTS; AMENDING  
10 SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13

14 **Section 1.** Section 85-2-402, MCA, is amended to read:

15 **"85-2-402. (Temporary) Changes in appropriation rights.** (1) The right to make a change subject to  
16 the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and  
17 confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change  
18 in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source  
19 of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ subsections (15) and (16)  
20 of this section, an appropriator may not make a change in an appropriation right without the approval of the  
21 department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

22 (2) Except as provided in subsections (4) through (6), ~~and (15), and (16)~~, the department shall approve  
23 a change in appropriation right if the appropriator proves by a preponderance of evidence that the following  
24 criteria are met:

25 (a) The proposed change in appropriation right will not adversely affect the use of the existing water  
26 rights of other persons or other perfected or planned uses or developments for which a permit or certificate has  
27 been issued or for which a state water reservation has been issued under part 3.

28 (b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream  
29 use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization  
30 does not require appropriation works, the proposed means of diversion, construction, and operation of the

1 appropriation works are adequate.

2 (c) The proposed use of water is a beneficial use.

3 (d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant  
4 to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest,  
5 or the written consent of the person with the possessory interest, in the property where the water is to be put to  
6 beneficial use.

7 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods  
8 will salvage at least the amount of water asserted by the applicant.

9 (f) The water quality of an appropriator will not be adversely affected.

10 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance  
11 with Title 75, chapter 5, part 4, will not be adversely affected.

12 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only  
13 if a valid objection is filed. A valid objection must contain substantial credible information establishing to the  
14 satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

15 (4) The department may not approve a change in purpose of use or place of use of an appropriation  
16 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator  
17 proves by a preponderance of evidence that:

18 (a) the criteria in subsection (2) are met; and

19 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a  
20 consideration of:

21 (i) the existing demands on the state water supply, as well as projected demands for water for future  
22 beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the  
23 protection of existing water rights and aquatic life;

24 (ii) the benefits to the applicant and the state;

25 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

26 (iv) the availability and feasibility of using low-quality water for the purpose for which application has  
27 been made;

28 (v) the effects on private property rights by any creation of or contribution to saline seep; and

29 (vi) the probable significant adverse environmental impacts of the proposed use of water as determined  
30 by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

1 (5) The department may not approve a change in purpose of use or place of use for a diversion that  
2 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being  
3 consumed unless:

4 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria in  
5 subsections (2) and (4) are met; and

6 (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then  
7 petitions the legislature and the legislature affirms the decision of the department after one or more public  
8 hearings.

9 (6) The state of Montana has long recognized the importance of conserving its public waters and the  
10 necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
11 federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in  
12 trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes  
13 that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict  
14 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before  
15 out-of-state use may occur:

16 (a) The department and, if applicable, the legislature may not approve a change in appropriation right  
17 for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator  
18 proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public  
19 hearings that:

20 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of  
21 subsection (2) or (4) are met;

22 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

23 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the  
24 citizens of Montana.

25 (b) In determining whether the appropriator has proved by clear and convincing evidence that the  
26 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature  
27 shall consider the following factors:

28 (i) whether there are present or projected water shortages within the state of Montana;

29 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be  
30 transported to alleviate water shortages within the state of Montana;

1 (iii) the supply and sources of water available to the applicant in the state where the applicant intends  
2 to use the water; and

3 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
4 water.

5 (c) When applying for a change in appropriation right to withdraw and transport water for use outside  
6 the state, the applicant shall submit to and comply with the laws of the state of Montana governing the  
7 appropriation and use of water.

8 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a  
9 year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change  
10 in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its  
11 approval or denial of the proposed change. The department shall provide notice and may hold one or more  
12 hearings upon any other proposed change if it determines that the proposed change might adversely affect the  
13 rights of other persons.

14 (8) The department or the legislature, if applicable, may approve a change subject to the terms,  
15 conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including  
16 limitations on the time for completion of the change. The department may extend time limits specified in the  
17 change approval under the applicable criteria and procedures of 85-2-312(3).

18 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the  
19 appropriator shall notify the department that the appropriation has been completed. The notification must contain  
20 a certified statement by a person with experience in the design, construction, or operation of appropriation works  
21 describing how the appropriation was completed.

22 (10) If a change is not completed as approved by the department or legislature or if the terms,  
23 conditions, restrictions, and limitations of the change approval are not complied with, the department may, after  
24 notice and opportunity for hearing, require the appropriator to show cause why the change approval should not  
25 be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke  
26 the change approval.

27 (11) The original of a change approval issued by the department must be sent to the applicant, and a  
28 duplicate must be kept in the office of the department in Helena.

29 (12) A person holding an issued permit or change approval that has not been perfected may change the  
30 place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant

1 to this section.

2 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent,  
3 agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change  
4 in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent,  
5 officer, or employee, attempt to change an appropriation right except in accordance with this section.

6 (14) The department may adopt rules to implement the provisions of this section.

7 (15) (a) An appropriator may change an appropriation right for a replacement well without the prior  
8 approval of the department if:

9 (i) the appropriation right is for:

10 (A) ground water outside the boundaries of a controlled ground water area; or

11 (B) ground water inside the boundaries of a controlled ground water area and if the provisions of the  
12 order declaring the controlled ground water area do not restrict such a change;

13 (ii) the change in appropriation right is to replace an existing well and the existing well will no longer be  
14 used;

15 (iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of  
16 the well being replaced and do not exceed:

17 (A) 450 gallons a minute for a municipal well; or

18 (B) 35 gallons a minute and 10 acre-feet a year for all other wells;

19 (iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated  
20 from the well being replaced; and

21 (v) a timely, correct and complete notice of replacement well is submitted to the department as provided  
22 in subsection (15)(b).

23 (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the  
24 appropriator shall file a notice of replacement well with the department on a form provided by the department.

25 (ii) The department shall review the notice of replacement well and shall issue an authorization of a  
26 change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct  
27 and complete.

28 (iii) The department may not issue an authorization of a change in appropriation right until a correct and  
29 complete notice of replacement well has been filed with the department. The department shall return a defective  
30 notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a

1 corrected and completed notice of replacement well within 30 days of notification of defects or within a further  
2 time as the department may allow, not to exceed 6 months.

3 (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

4 (A) cease appropriation of water from the replacement well pending approval by the department; and

5 (B) submit an application for a change in appropriation right to the department pursuant to subsections  
6 (1) through (3).

7 (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under  
8 85-2-404.

9 (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well  
10 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to  
11 37-43-202.

12 (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right  
13 that meets the requirements of subsection (15)(a).

14 (16) (a) An appropriator may change an appropriation right without the prior approval of the department  
15 for the purpose of constructing a redundant water supply well in a public water supply system, as defined in  
16 75-6-102, if the redundant water supply well:

17 (i) withdraws water from the same ground water source as the original well; and

18 (ii) is required by a state or federal agency.

19 (b) The priority date of the redundant water supply well is the same as the priority date of the original  
20 well. Only one well may be used at one time.

21 (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice  
22 of construction of the well with the department on a form provided by the department. The department may  
23 return a defective notice of construction to the appropriator for correction and completion.

24 (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets  
25 the requirements of this section. (Terminates June 30, 2005--sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L.  
26 1995.)

27 **85-2-402. (Effective July 1, 2005) Changes in appropriation rights.** (1) The right to make a change  
28 subject to the provisions of this section in an existing water right, a permit, or a state water reservation is  
29 recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant  
30 for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights

1 in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ subsections  
2 (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the  
3 approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete  
4 application.

5 (2) Except as provided in subsections (4) through (6), ~~and (15), and (16)~~, the department shall approve  
6 a change in appropriation right if the appropriator proves by a preponderance of evidence that the following  
7 criteria are met:

8 (a) The proposed change in appropriation right will not adversely affect the use of the existing water  
9 rights of other persons or other perfected or planned uses or developments for which a permit or certificate has  
10 been issued or for which a state water reservation has been issued under part 3.

11 (b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the  
12 proposed means of diversion, construction, and operation of the appropriation works are adequate.

13 (c) The proposed use of water is a beneficial use.

14 (d) The applicant has a possessory interest, or the written consent of the person with the possessory  
15 interest, in the property where the water is to be put to beneficial use.

16 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods  
17 will salvage at least the amount of water asserted by the applicant.

18 (f) The water quality of an appropriator will not be adversely affected.

19 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance  
20 with Title 75, chapter 5, part 4, will not be adversely affected.

21 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only  
22 if a valid objection is filed. A valid objection must contain substantial credible information establishing to the  
23 satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

24 (4) The department may not approve a change in purpose of use or place of use of an appropriation  
25 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator  
26 proves by a preponderance of evidence that:

27 (a) the criteria in subsection (2) are met; and

28 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a  
29 consideration of:

30 (i) the existing demands on the state water supply, as well as projected demands for water for future

1 beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the  
2 protection of existing water rights and aquatic life;

3 (ii) the benefits to the applicant and the state;

4 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

5 (iv) the availability and feasibility of using low-quality water for the purpose for which application has  
6 been made;

7 (v) the effects on private property rights by any creation of or contribution to saline seep; and

8 (vi) the probable significant adverse environmental impacts of the proposed use of water as determined  
9 by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

10 (5) The department may not approve a change in purpose of use or place of use for a diversion that  
11 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being  
12 consumed unless:

13 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria in  
14 subsections (2) and (4) are met; and

15 (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then  
16 petitions the legislature and the legislature affirms the decision of the department after one or more public  
17 hearings.

18 (6) The state of Montana has long recognized the importance of conserving its public waters and the  
19 necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
20 federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in  
21 trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes  
22 that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict  
23 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before  
24 out-of-state use may occur:

25 (a) The department and, if applicable, the legislature may not approve a change in appropriation right  
26 for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator  
27 proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public  
28 hearings that:

29 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of  
30 subsection (2) or (4) are met;

- 1 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and  
2 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the  
3 citizens of Montana.
- 4 (b) In determining whether the appropriator has proved by clear and convincing evidence that the  
5 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature  
6 shall consider the following factors:
- 7 (i) whether there are present or projected water shortages within the state of Montana;  
8 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be  
9 transported to alleviate water shortages within the state of Montana;  
10 (iii) the supply and sources of water available to the applicant in the state where the applicant intends  
11 to use the water; and  
12 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
13 water.
- 14 (c) When applying for a change in appropriation right to withdraw and transport water for use outside  
15 the state, the applicant shall submit to and comply with the laws of the state of Montana governing the  
16 appropriation and use of water.
- 17 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a  
18 year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change  
19 in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its  
20 approval or denial of the proposed change. The department shall provide notice and may hold one or more  
21 hearings upon any other proposed change if it determines that the proposed change might adversely affect the  
22 rights of other persons.
- 23 (8) The department or the legislature, if applicable, may approve a change subject to the terms,  
24 conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including  
25 limitations on the time for completion of the change. The department may extend time limits specified in the  
26 change approval under the applicable criteria and procedures of 85-2-312(3).
- 27 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the  
28 appropriator shall notify the department that the appropriation has been completed. The notification must contain  
29 a certified statement by a person with experience in the design, construction, or operation of appropriation works  
30 describing how the appropriation was completed.

1 (10) If a change is not completed as approved by the department or legislature or if the terms,  
2 conditions, restrictions, and limitations of the change approval are not complied with, the department may, after  
3 notice and opportunity for hearing, require the appropriator to show cause why the change approval should not  
4 be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke  
5 the change approval.

6 (11) The original of a change approval issued by the department must be sent to the applicant, and a  
7 duplicate must be kept in the office of the department in Helena.

8 (12) A person holding an issued permit or change approval that has not been perfected may change the  
9 place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant  
10 to this section.

11 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent,  
12 agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change  
13 in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent,  
14 officer, or employee, attempt to change an appropriation right except in accordance with this section.

15 (14) The department may adopt rules to implement the provisions of this section.

16 (15) (a) An appropriator may change an appropriation right for a replacement well without the prior  
17 approval of the department if:

18 (i) the appropriation right is for:

19 (A) ground water outside the boundaries of a controlled ground water area; or

20 (B) ground water inside the boundaries of a controlled ground water area and if the provisions of the  
21 order declaring the controlled ground water area do not restrict such a change;

22 (ii) the change in appropriation right is to replace an existing well and the existing well will no longer be  
23 used;

24 (iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of  
25 the well being replaced and do not exceed:

26 (A) 450 gallons a minute for a municipal well; or

27 (B) 35 gallons a minute and 10 acre-feet a year for all other wells;

28 (iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated  
29 from the well being replaced; and

30 (v) a timely, correct and complete notice of replacement well is submitted to the department as provided

1 in subsection (15)(b).

2 (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the  
3 appropriator shall file a notice of replacement well with the department on a form provided by the department.

4 (ii) The department shall review the notice of replacement well and shall issue an authorization of a  
5 change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct  
6 and complete.

7 (iii) The department may not issue an authorization of a change in appropriation right until a correct and  
8 complete notice of replacement well has been filed with the department. The department shall return a defective  
9 notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a  
10 corrected and completed notice of replacement well within 30 days of notification of defects or within a further  
11 time as the department may allow, not to exceed 6 months.

12 (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

13 (A) cease appropriation of water from the replacement well pending approval by the department; and

14 (B) submit an application for a change in appropriation right to the department pursuant to subsections  
15 (1) through (3).

16 (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under  
17 85-2-404.

18 (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well  
19 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to  
20 37-43-202.

21 (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right  
22 that meets the requirements of subsection (15)(a).

23 (16) (a) An appropriator may change an appropriation right without the prior approval of the department  
24 for the purpose of constructing a redundant water supply well in a public water supply system, as defined in  
25 75-6-102, if the redundant water supply well:

26 (i) withdraws water from the same ground water source as the original well; and

27 (ii) is required by a state or federal agency.

28 (b) The priority date of the redundant water supply well is the same as the priority date of the original  
29 well. Only one well may be used at one time.

30 (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice

1 of construction of the well with the department on a form provided by the department. The department may  
2 return a defective notice of construction to the appropriator for correction and completion.

3 (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets  
4 the requirements of this section. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

5 **85-2-402. (Effective July 1, 2009) Changes in appropriation rights.** (1) The right to make a change  
6 subject to the provisions of this section in an existing water right, a permit, or a state water reservation is  
7 recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant  
8 for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights  
9 in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ subsections  
10 (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the  
11 approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete  
12 application.

13 (2) Except as provided in subsections (4) through (6), ~~and (15), and (16)~~, the department shall approve  
14 a change in appropriation right if the appropriator proves by a preponderance of evidence that the following  
15 criteria are met:

16 (a) The proposed change in appropriation right will not adversely affect the use of the existing water  
17 rights of other persons or other perfected or planned uses or developments for which a permit or certificate has  
18 been issued or for which a state water reservation has been issued under part 3.

19 (b) The proposed means of diversion, construction, and operation of the appropriation works are  
20 adequate.

21 (c) The proposed use of water is a beneficial use.

22 (d) The applicant has a possessory interest, or the written consent of the person with the possessory  
23 interest, in the property where the water is to be put to beneficial use.

24 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods  
25 will salvage at least the amount of water asserted by the applicant.

26 (f) The water quality of an appropriator will not be adversely affected.

27 (g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance  
28 with Title 75, chapter 5, part 4, will not be adversely affected.

29 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only  
30 if a valid objection is filed. A valid objection must contain substantial credible information establishing to the

1 satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

2 (4) The department may not approve a change in purpose of use or place of use of an appropriation  
3 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator  
4 proves by a preponderance of evidence that:

5 (a) the criteria in subsection (2) are met; and

6 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a  
7 consideration of:

8 (i) the existing demands on the state water supply, as well as projected demands for water for future  
9 beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the  
10 protection of existing water rights and aquatic life;

11 (ii) the benefits to the applicant and the state;

12 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

13 (iv) the availability and feasibility of using low-quality water for the purpose for which application has  
14 been made;

15 (v) the effects on private property rights by any creation of or contribution to saline seep; and

16 (vi) the probable significant adverse environmental impacts of the proposed use of water as determined  
17 by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

18 (5) The department may not approve a change in purpose of use or place of use for a diversion that  
19 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being  
20 consumed unless:

21 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria in  
22 subsections (2) and (4) are met; and

23 (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then  
24 petitions the legislature and the legislature affirms the decision of the department after one or more public  
25 hearings.

26 (6) The state of Montana has long recognized the importance of conserving its public waters and the  
27 necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
28 reserved water rights held by the United States for federal reserved lands and in trust for the various Indian  
29 tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate  
30 conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare

1 of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may  
2 occur:

3 (a) The department and, if applicable, the legislature may not approve a change in appropriation right  
4 for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator  
5 proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public  
6 hearings that:

7 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of  
8 subsection (2) or (4) are met;

9 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

10 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the  
11 citizens of Montana.

12 (b) In determining whether the appropriator has proved by clear and convincing evidence that the  
13 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature  
14 shall consider the following factors:

15 (i) whether there are present or projected water shortages within the state of Montana;

16 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be  
17 transported to alleviate water shortages within the state of Montana;

18 (iii) the supply and sources of water available to the applicant in the state where the applicant intends  
19 to use the water; and

20 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
21 water.

22 (c) When applying for a change in appropriation right to withdraw and transport water for use outside  
23 the state, the applicant shall submit to and comply with the laws of the state of Montana governing the  
24 appropriation and use of water.

25 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a  
26 year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change  
27 in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its  
28 approval or denial of the proposed change. The department shall provide notice and may hold one or more  
29 hearings upon any other proposed change if it determines that the proposed change might adversely affect the  
30 rights of other persons.

1 (8) The department or the legislature, if applicable, may approve a change subject to the terms,  
2 conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including  
3 limitations on the time for completion of the change. The department may extend time limits specified in the  
4 change approval under the applicable criteria and procedures of 85-2-312(3).

5 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the  
6 appropriator shall notify the department that the appropriation has been completed. The notification must contain  
7 a certified statement by a person with experience in the design, construction, or operation of appropriation works  
8 describing how the appropriation was completed.

9 (10) If a change is not completed as approved by the department or legislature or if the terms,  
10 conditions, restrictions, and limitations of the change approval are not complied with, the department may, after  
11 notice and opportunity for hearing, require the appropriator to show cause why the change approval should not  
12 be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke  
13 the change approval.

14 (11) The original of a change approval issued by the department must be sent to the applicant, and a  
15 duplicate must be kept in the office of the department in Helena.

16 (12) A person holding an issued permit or change approval that has not been perfected may change the  
17 place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant  
18 to this section.

19 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent,  
20 agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change  
21 in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent,  
22 officer, or employee, attempt to change an appropriation right except in accordance with this section.

23 (14) The department may adopt rules to implement the provisions of this section.

24 (15) (a) An appropriator may change an appropriation right for a replacement well without the prior  
25 approval of the department if:

26 (i) the appropriation right is for:

27 (A) ground water outside the boundaries of a controlled ground water area; or

28 (B) ground water inside the boundaries of a controlled ground water area and if the provisions of the  
29 order declaring the controlled ground water area do not restrict such a change;

30 (ii) the change in appropriation right is to replace an existing well and the existing well will no longer be

1 used;

2 (iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of  
3 the well being replaced and do not exceed:

4 (A) 450 gallons a minute for a municipal well; or

5 (B) 35 gallons a minute and 10 acre-feet a year for all other wells;

6 (iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated  
7 from the well being replaced; and

8 (v) a timely, correct and complete notice of replacement well is submitted to the department as provided  
9 in subsection (15)(b).

10 (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the  
11 appropriator shall file a notice of replacement well with the department on a form provided by the department.

12 (ii) The department shall review the notice of replacement well and shall issue an authorization of a  
13 change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct  
14 and complete.

15 (iii) The department may not issue an authorization of a change in appropriation right until a correct and  
16 complete notice of replacement well has been filed with the department. The department shall return a defective  
17 notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a  
18 corrected and completed notice of replacement well within 30 days of notification of defects or within a further  
19 time as the department may allow, not to exceed 6 months.

20 (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

21 (A) cease appropriation of water from the replacement well pending approval by the department; and

22 (B) submit an application for a change in appropriation right to the department pursuant to subsections  
23 (1) through (3).

24 (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under  
25 85-2-404.

26 (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well  
27 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to  
28 37-43-202.

29 (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right  
30 that meets the requirements of subsection (15)(a).

1           (16) (a) An appropriator may change an appropriation right without the prior approval of the department  
2 for the purpose of constructing a redundant water supply well in a public water supply system, as defined in  
3 75-6-102, if the redundant water supply well:

4           (i) withdraws water from the same ground water source as the original well; and

5           (ii) is required by a state or federal agency.

6           (b) The priority date of the redundant water supply well is the same as the priority date of the original  
7 well. Only one well may be used at one time.

8           (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice  
9 of construction of the well with the department on a form provided by the department. The department may  
10 return a defective notice of construction to the appropriator for correction and completion.

11           (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets  
12 the requirements of this section."

13

14           NEW SECTION. Section 2. Notification to tribal governments. The secretary of state shall send a  
15 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
16 band of Chippewa.

17

18           NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are  
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
20 the part remains in effect in all valid applications that are severable from the invalid applications.

21

22           NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

23

- END -